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May 18, 2023

VIA ECF

Honorable Gabriel W. Gorenstein
United States Magistrate Judge
Southern District of New York
500 Pearl Street
New York, NY 10007

MEMORANDUM ENDORSED

Re: Benjamin Rich v. State of New York, et al.,
21 Civ. 3835 (AT) (GWG)

Your Honor:

I am an Assistant Corporation Counsel in the Office of Honorable Sylvia O. Hinds-Radix, Corporation Counsel of the City of New York, representing defendants Michael Miller and Vincent Corrandio in the above-referenced action. For the reasons set forth herein, defendants write to respectfully request that the Court adjourn the conference scheduled for May 19, 2023 at 10:00 a.m. to June 2, 2023 at 10:00 a.m., or to another date and time convenient to the Court.

At the very outset, defendants sincerely apologize for the belatedness of this request. As explained further below, defendants were only finally able to communicate with Mr. Frekhtman today at approximately 2:30 p.m.

By way of background, defendants filed a motion for summary judgment in which they allege that plaintiff Benjamin Rich signed a general release that released the defendants herein from any claims occurring before that date. *See* ECF Nos. 95, 97. On March 28, 2023, the Court ordered plaintiff to submit a sworn affidavit providing “all information he has” about the general release. *See* ECF No. 104. Plaintiff filed two letters in response to the Court’s March 28, 2023 and neither is sworn. *See* ECF Nos. 105, 107, 108. Moreover, the Court found that the letters were confusing in their wording. *See* ECF No. 110. On April 24, 2023, the Court ordered that a telephonic hearing be held on May 10, 2023 at 10:00 a.m. *Id.* The May 10, 2023 hearing was subsequently adjourned upon a request by defendants. *See* ECF Nos. 111 & 112.

Today, at approximately 2:30 p.m., Mr. Frekhtman, Esq. called the undersigned back. It appears that, upon information and belief, plaintiff informed Mr. Frekhtman that an individual who he represented to be his wife had a power of attorney on plaintiff’s behalf. The undersigned also learned that Mr. Frekhtman’s law office may have had a power of attorney on plaintiff’s behalf. Mr. Frekhtman indicated that he will review his records, specifically to see if

he has a copy of the wife's power of attorney. Additional time is needed so that defendants can seek to obtain a copy of the power of attorney and to learn the wife's name in order to have the wife testify in this hearing, if necessary. In addition, Mr. Frekhtman and/or someone else in his office may need to testify during the telephonic hearing. However, Mr. Frekhtman has informed the undersigned that it would be difficult for him to attend tomorrow's telephonic hearing.

Accordingly, defendants respectfully requests that the Court adjourn the conference scheduled for May 19, 2023 at 10:00 a.m. to June 2, 2023 at 10:00 a.m., or to another date and time convenient to the Court.

Thank you for your consideration herein.

Respectfully submitted,



Felix De Jesus
Assistant Corporation Counsel
Special Federal Litigation Division

cc: **BY U.S. MAIL**
Benjamin Rich (f/k/a Samuel Guillaume)
Plaintiff Pro Se
Smart Communications/PADOC
Inmate Number QP2307
SCI Coal Township
P.O. Box 33028
St Petersburg, FL 33733

Application denied. The hearing will go forward with Mr. Rich's testimony only. If time permits, we will discuss whether the City will either supplement its existing motion or whether it will file a new motion for summary judgment motion based on information it has learned from Mr. Frekhtman.

So Ordered.


GABRIEL W. CORENSTEIN
United States Magistrate Judge

May 18, 2023